IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1279 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJKUMAR CHANAMAL SINDHI
Versus
SUB DIVISIONAL MAGISTRARE

Appearance:
MR BN PATEL for Petitioner No. 1
MS NANDINI JOSHI, AGP for Respondents No. 1-3
MR MEHUL H RATHOD for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE M.C.PATEL

Date of decision: 08/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. The petitioner challenges the order dated 15th February, 2000 passed by respondent no.1 rejecting the application of the petitioner for registration for Hotel - Eating House in the name of Shiv Shakti Lodge and seeks a direction on the respondent no.1 to grant Certificate of Registration. A further direction is sought on the respondents no.2 and 3 that they should consider the application of his mother as per Annexure 'B' for alternative site, pursuant to the order at Annexure 'A' made in Special Civil Application No.2380 of 1983, and to allot the alternative suitable site to the petitioner.

2. The Sub-Divisional Magistrate, Palanpur, by the impugned order dated 15th February, 2000, informed the petitioner that his application dated 27th August, 1999 for issuing Registration Certificate for Hotel Shiv Shakti was rejected on the ground that the land in question was under encroachment and further that no alternative place was allotted to the applicant by the Municipality. It is clear that the grounds given by the Sub-Divisional Magistrate are germane to the disposal of the application and it cannot be said that the order is arbitrary. It appears that the order of the Sub-Divisional Magistrate has not been challenged by the petitioner.

3. The learned counsel for the petitioner argued that the space which was offered to the petitioner in the alternate was not sufficient for him to run his hotel business. Admittedly, the petitioner had encroached upon the land and the idea behind requiring the Deesa Municipality to consider his case for some alternative place, as required by order dated 27th January, 1997 passed by this court in Special Civil Application No.2380 of 1983 and Special Civil Application No.1279 of 2000, was not to attach any stamp of legality to the encroached portion but to provide some alternative source of livelihood. Pursuant to the orders made by the court, the granting of alternative place to the petitioner was considered and the Deesa Municipality had sent a letter dated 1st September, 2001 to the petitioner stating that pursuant to his application dated 26th February, 1997, the Municipality had decided to allot a plot of 48 sq. feet on lease to him, as per the rules and regulations of the Municipality, opposite Bhansali Hospital on his paying Rs.12,500/- as Development Charges and Rs.2,500 as Building Permission Fee i.e., in all, Rs.15,000/- on eleven months' lease basis. In answer to this offer, the petitioner wrote letter dated 10th September, 2001 inter

alia stating that his financial position was not good and that he would not be able to pay Rs.15,000/-. He stated that he was, however, ready to accept the allotted plot and remove encroachment but since he would not be able to run his business successfully at that place, he may be given another plot. He then made an application on 22nd September, 2001 stating that he should be given a plot in one of the five suggested plots.

4. It is evident that the Municipality had, pursuant to the directions of the court, considered the petitioner's application for alternative plot and offered the same. However, the petitioner seems to have put up an excuse for not occupying the same and asked for a plot in some other place, on the allotment of which, he would remove his encroachment as per the stand taken by him. It is evident that the petitioner is trying to buy time. The Municipality had offered him a plot which he ought to have accepted. The petitioner has no legal right to claim a plot at a particular place from the lands belonging to the Municipality or the State. There is no element of arbitrariness or any illegality in the action of the respondents in allotting him the said plot. It was sought to be contended that, with a view to put up a lodge, a larger plot, equivalent to the plot which he had encroached, may be allotted. There can be no such right claimed or recognised on the basis of encroachment on public land. The petition is thoroughly misconceived and is, therefore, dismissed. Rule is discharged with no order as to costs.

5. Though the affidavit-in-reply was served on 5th July, 2002, the learned counsel, at the end of his arguments, asked us to put on record that he wants to file a rejoinder. We have not relied upon the affidavit-in-reply but have referred only to the letters admittedly written by the petitioner which were also referred to by the learned counsel for the petitioner. The matter has been coming on board since March, 2000 and we found no valid reason for adjourning the matter for enabling the petitioner to file a rejoinder which, in our opinion, was not at all necessary in view of the facts and circumstances of the case.

6. It will be open for the petitioner to pursue, before the Municipality, the matter of allotment of the alternative plot which has been already offered. This observation is made at the request of the learned counsel for the petitioner.

(R.K. Abichandani, J.)

(M.C. Patel, J.)

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